RECENT TAX REFORMS IN OHIO

The publication of the first report of the permanent tax commission of Ohio, the popular vote last November authorizing a constitutional convention to revise the constitution, and the passage of progressive legislation in matters of taxation and finance, are directing attention to this state, and justify an account of recent reforms and of plans for the future.

Under the constitution of 1851 the principle of uniformity in taxation was adopted: "Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money." The adoption of this constitution necessitated a complete revision of the tax laws, in order to bring their provisions into conformity with the requirements of the constitution. This was done in 1852, which marked the beginning of the attempt to tax all property under the same law by uniform methods. The general property tax now remained for forty years practically the sole source of revenue; but the inadequacy and inequity of the system finally led to the splitting up of this complex of taxes into parts, and the imposition of special taxes. The first step away from absolute uniformity was taken by the establishment of separate boards of appraisement; first in the case of railways in 1865, and gradually of other corporations, though they were still generally taxed at the same rate as other property under the general property tax.

The tax laws were codified by two long acts passed in 1859 and 1878,[1] but no essential changes were introduced. Indeed so completely did the legislature keep their hands off this subject that in the index of the session laws, passed from 1869 to 1876, there were no references to taxes or taxation, except to local or municipal laws. The economic development of the state was rapid, the growth in the amount of property returned for taxation steady, while on the other hand the debt was being paid off and the state government was economically administered. Under these circumstances the revenue derived from the general property tax was sufficient to meet normal needs and consequently no changes were made in the tax system.

Since the sole reliance was placed upon the general property

[1] O. L., 1859, p. 128; 1878, p. 436.

tax, every effort was made to secure the fullest possible returns, and to attain this the famous so-called tax inquisitor system was adopted. By this the county commissioners were authorized to employ private individuals to ferret out property improperly omitted from the tax duplicates, paying them a commission on the amount of taxes collected through information furnished by them,[2] limited to twenty per cent of the taxes actually paid in as a result of their researches. In correcting false returns, the county auditor might go back five years and add a fifty per cent penalty for each year in which the taxes were evaded. The auditor also had almost drastic power to investigate, to summon witnesses, administer oaths, take testimony, etc., which, taken in conjunction with the inquisitorial features, would seem to have made the concealment of personal property almost impossible. In actual practice, however, the system did not work out so well as was anticipated. As his position was political, the auditor often proved unwilling to coöperate with the tax inquisitors in placing the full amount of the omitted property on the duplicate. A system of semi-official blackmail was often concealed by the law, the financial returns scarcely justified its retention, and the system was finally abolished in 1904.

In the eighties the state undertook upon a greatly enlarged scale the policy of caring for the dependent and defective classes, and entered upon an extensive and expensive career of building state institutions for these purposes. The care of the state canals, too, which for seventeen years had been leased to a private corporation, now devolved upon the state, and called for large sums annually to meet the recurring deficits. These factors, together with the growth of a general spirit of extravagance and lax administration, swelled the budget of the state beyond the amount of the revenues yielded by the general property tax. Some relief was afforded in 1888 by giving the state a share of the liquor taxes, which had previously gone entirely into the local treasuries; and by the passage of a collateral inheritance tax law in 1893,[3] but new sources of revenue were urgently needed. Moreover, with the growth of corporate wealth and of other forms of intangible property, the inequity of the system had been pressing more and more upon men's

[2] 77 O. L., 205.

[3] Act of Jan. 27,1893, 90 O. L. 14. A direct inheritance tax law was passed on April 20, 1894, but was declared unconstitutional two years later (53 O. S. 315). Another direct inheritance tax was provided for in 1904 (97 O. L. 398), but this act was repealed in 1906 (98 O. L. 229).

attention. Real estate was bearing a disproportionate amount of taxation; all but a mere bagatelle of intangible property was escaping taxation, less than ten per cent of the taxes of the state being borne by this species of property. Corporations and other business enterprises, with the possible exception of banks, escaped with little or no taxation.

To meet these difficulties a tax commission was appointed in 1893, and promptly reported. Among other things they recommended "the equalization of taxation and increase of revenue by laying taxes on business, with an especial view to reaching intangible property, and corporations and enterprises, whose ability to contribute to the expenses of government cannot be justly measured by a tax upon their property." As a result, the legislature imposed a number of new taxes upon corporations and general business. A tax was laid upon traffic in cigarettes, and the share of the state in the liquor tax was increased. A franchise tax of one tenth of one per cent of their capital was imposed upon all Ohio companies; and a similar tax upon that proportion of their capital used by foreign companies in Ohio; excise taxes were also placed upon foreign insurance, express, and sleeping car companies; and finally a direct inheritance tax law was passed, though the last was promptly declared unconstitutional.

For some years no further changes were made in the tax laws, as the new sources of revenue thus opened up grew steadily more lucrative. In 1901, as the result of the decennial revaluation of real estate, there was added to the total valuation of real and personal property upon the grand duplicate the sum of $135,000,000. The total amount of money paid into the state treasury for the year ending November 15, 1901, was about $8,100,000; of this amount, $5,400,000, or two thirds, was raised by levies upon real and personal property, and the remaining third came from other sources of revenue. The relief to the agricultural interests of the state was so marked that the extension of this principle was earnestly advocated by Governor Nash. He urged that the complete segregation of state and local taxation be sought, and that the revenues for state purposes be secured from corporation, inheritance, and excise taxes, leaving to the local governments the general property tax.

By the act of April 29, 1902, the general assembly partially followed this advice, and omitted to make any levy for the general

revenue fund upon the real and personal property returned for taxation. The levy for common school purposes was reduced from 1 mill to .95 mill; and for sinking fund purposes from .30 to .18 mill. In his next message Governor Nash voiced the belief that the legisture ought "eventually to wipe out this tax altogether." Governor Pattison in 1906 advocated the same policy: that as far as possible, the necessary revenue for the expenses of the state should be raised without calling upon the respective counties.

The loss of revenue from the general property tax was made good by the passage of the "Cole" law, which raised the excise tax on public service corporations from one half to one per cent of their gross earnings, and the "Willis" law, which imposed a tax of one tenth of one per cent on foreign and domestic corporations other than those operating a public service. The transition was moreover made easy by the existence of a large balance in the general revenue fund, amounting on November 15, 1902, to almost $3,000,000.

The problem of reforming the existing system of taxation was, however, by no means settled. In November, 1905, an amendment was passed to article XII, section 2, of the constitution, exempting from taxation Ohio state, county, township, municipal, and school bonds. As the principle of stoppage at the source had never been applied to the taxation of any of these bonds, only a part of them had been subjected to taxation, but the rate of interest on all had to be high enough to cover the risk of their being taxed. By exempting them definitely, the rate of interest, which it was necessary for the local governments to pay upon money borrowed by them, was reduced by nearly the average rate of taxation formerly levied upon the bonds. Dissatisfaction next found expression in the action of various business and professional associations, and in other less formal expressions of opinion, all of which demanded reform. Accordingly, in September, 1906, a commission of five men was appointed to investigate the tax laws and make recommendations. They submitted their report on January 10, 1908. The evils of the existing system were classified under five heads: inequalities between the owners of real and personal property, among the owners of real estate, among the owners of personal property, between owners of real and personal property and owners of corporate property, and finally inequalities among corporations.

The recommendations were five in number. First and foremost

came a proposed amendment of the constitution, giving the legislature a freer hand to deal with such subjects as franchises, stocks, bonds, cash, mortgages, and other intangible property, and abolishing the rule of uniformity, which had proved such a stumbling block in the way of tax reform. The proposed amendment simply gave to the general assembly in general terms power to establish and maintain an equitable system for raising state and local revenue. The legislature was to be authorized, but not required, to classify property for purposes of taxation. Other recommendations were as follows: (2) the establishment of a state tax board of three members to administer all laws for the collection of state revenues and to make such recommendations upon the general subject of taxation as investigation and experience may from time to time suggest; (3) a more frequent appraisement of real estate; (4) the abolition of the present state levy upon real and personal property and the complete separation of state and local revenues at the earliest practicable date; (5) that authority be given to local communities to secure publicity in taxation.

The recommendations were favorably received, and within two years four out of the five suggestions were practically adopted. We may take these up in order. As it had been found impossible, after repeated trials, to secure an amendment to the constitution permitting the classification of property for purposes of taxation, even the one proposed by the commission being rejected at the polls, it was next suggested that a constitutional convention be called to overhaul the instrument as a whole. Each of the political parties ratified this suggestion, and a popular vote on November 8, 1910, overwhelmingly favored the proposal, being 693,263 yeas to 67,718 in the negative. The corporate interests, however, which feared an increase of tax burdens, contended that the convention should meet in 1913 instead of 1911, as was planned. When it meets there is little doubt that the provisions of the constitution relating to taxation and finance will be carefully revised, and that the rule of uniformity in taxation will be changed.

The second recommendation to be adopted was that of more frequent appraisements of real estate. Between 1825, when the system of the general property tax was introduced into Ohio, and 1859, the valuations of real property had been made about every six years; from the latter date down to 1910 valuations had been decennial. This system was adopted when the real estate of Ohio

consisted almost wholly of farm lands and had been retained by this state after it was given up by every other state in the Union. Gross injustice was often done by the rapid changes in the value of real estate, which local boards were unable to correct during the interval.[4] As a compromise between the expense of annual appraisements and the injustice of decennial ones, the commission recommended quadrennial appraisements. By act of March 12, 1909, this was provided for, to begin in 1910.[5]

The fifth recommendation, to give local communities authority to secure publicity in taxation, went also into effect by this same law.[6] Following a practice already adopted in New York City, Chicago, in some cities in Delaware and New Jersey, and a few other places, the law provided that the real estate assessors in cities should "cause to be printed in pamphlet form all the real estate owners in the ward, together with the lot numbers, feet frontage and valuation made by them of each parcel of real estate, and cause a copy of same to be mailed to each and every owner of real estate in the ward." In townships and villages the auditor was to issue similar pamphlets. In this way definite information would be furnished every taxpayer of his own appraisement as compared with those of his neighbors, and as a consequence of such comparison and ensuing protests there would result practically a community valuation of each parcel of real estate and an elimination of inequalities. Though it has been in practical operation less than a year, this act has met with the warmest approbation of the tax officials of the state.

The most important and far-reaching legislation, however, consisted in the appointment of a permanent tax commission.[7] By this act Ohio took rank among the progressive states in matters relating to taxation, and opened the way for further reforms. The commission consists of three members, appointed by the governor for a

[4] By the decision of the supreme court of Ohio (Davies, Auditor, v. The National Land and Investment Co., 76 O. S. 407) it was held that after the completion of a decennial appraisement of real estate, and its equalization, it was not competent for a local board to re-value or increase the taxable appraisement of real estate, or even to correct gross inequalities caused by the growth of a city. The case thus decided involved property in Toledo, whose value had increased millions of dollars.

[5] 100 O. L. 81. Amended by act of Jan. 31, 1910; 101 O. L.

[6] Sec. 8 of amended act.

[7] Act of May 10, 1910. 101 O. L. 399.

term of three years, at a salary of $5,000 per annum. Their most important function, for the present at least, is to consist in the assessment of railroads, express, telegraph, and telephone companies, sleeping car, pipe line, and equipment companies, and other public utilities, which had previously been assessed by a number of special boards. For instance, railroads had been assessed by the county auditors, and the others by various state boards; the taxes on public service corporations had been collected by the auditor; the excise tax on other corporations had been collected by the secretary of state, and other taxes had been paid to the state treasurer. All the machinery for the assessment of these various taxes was now concentrated in the hands of the tax commission, while all taxes were to be paid directly to the state treasurer.

After the value of the property of public service corporations is assessed by the commission, the valuations are apportioned to the local taxing districts in which they are situated. In the case of express, telegraph, and telephone companies, the value of their property is to be determined by the value of their capital stock in accordance with certain rules; from the value so determined is to be deducted the value of real estate already taxed. In the case of other public utilities "all the personal property thereof, which shall include all real estate necessary to the daily operations of the public utility and money and credits within the state" are to be assessed by the commission, and in addition detailed statements of tangible property must be made by the corporations.

Not only was the machinery of assessment simplified and unified, but the principle of differentiation was introduced in the taxation of corporations. Previously all the public service utilities had paid the same excise tax of one per cent of their gross receipts supposedly earned within the state; this large class was now broken up into smaller groups, upon each of which is laid a different rate.[8] Railroad and pipe line companies are taxed 4 per cent of their intrastate gross receipts; express and telegraph companies, 2 per cent; and street, suburban and interurban railroad companies, electric light, gas, natural gas, waterworks, telephone, messenger or signal, union depot, heating or cooling, and water transportation companies, 1.2 per cent of such gross earnings or receipts. The companies

[8] Owing to the constitutional requirements of uniform treatment of all forms of property, corporate and individual, corporation taxes may not be imposed as such in Ohio, but excise taxes for the privilege of carrying on their business within the state are exacted of these public utilities.

in the last two groups are also subject to the assessment and taxation of their property in the usual manner. Sleeping car, freight line and equipment companies are also taxed 1.2 per cent on the proportion of their capital stock adjudged by the commission to represent the capital and property of each company owned and used in Ohio, after deducting the value of all real estate taxed locally in Ohio. The differentiation in rates thus introduced was fully justified on the ground of difference in character, and the increase in rate was defended on the ground that it now applied strictly to intra-state business only, which was more carefully defined. Moreover, some new utilities, like union depot companies, were for the first time subjected to taxation.

Each corporation for profit organized under the laws of Ohio is required to make an annual report, and is subject to a fee of three twentieths of one per cent upon its subscribed or issued and outstanding capital stock. Each foreign corporation for profit doing business in Ohio must make similar reports annually; and is subject to a tax of one tenth of one per cent for 1910, and three twentieths of one per cent for each year thereafter, upon the proportion of the authorized capital stock represented by property and business in the state. Public utility, insurance, and building and loan companies required to make other reports and pay other taxes are not subject to these provisions.

With respect to the assessment of real and personal property of individuals, power is given the commission to order a reassessment of the same in any taxing district, whenever in their judgment it was not assessed at its true value in money. A new appraiser or board of appraisers is to be appointed for this purpose. Taken in conjunction with the quadrennial assessment of real estate it is now possible for the first time to correct inequalities in assessment as soon as they appear; the law therefore marks a great improvement in this regard. The commission also received power to raise or lower the assessed value of any real or personal property, and to require county auditors to place upon the tax duplicate any omitted property.

The tax commission act of 1910 was revised during the last session of the legislature, and was considerably improved by a rearrangement of the sections and by clearer definitions.[9] At the same time the powers of the commission over corporations were

[9] Act of May 31, 1911. (House Bill No. 491).

strengthened and a determined effort made to force them to pay their taxes. The treasurer of state is directed to send to the tax commission, instead of to the attorney general as formerly, a list of the delinquent public utilities and corporations, and the commission is then to direct the attorney general to institute actions in the courts if it wishes. In general the commission is made the final authority in all matters of administration relating to taxation. Most of the new matter in the revised act was directed against corporations. Any corporation which fails to make a report or pay its taxes within ninety days after the date set shall have its articles of incorporation cancelled. They may have these renewed within two years by paying a penalty of $100 in addition to all other fines and taxes, but are punishable by fine up to $1000 if they attempt to carry on business in the interval. In such case the commission may request the attorney general to apply for an injunction against the recalcitrant corporation. No domestic or foreign corporation may dissolve or retire from business until the commission certifies that it has paid all its taxes.

These provisions were all called forth by the resistance of certain corporations to the payment of the taxes assessed by the commission, and will do much to strengthen the hands of the latter. Quite different in purpose is another provision, which also appears for the first time in the revised act, and is directed against campaign contributions by corporations. Every corporation or public utility required to make any return to the commission, is also ordered to submit an affidavit, sworn to by a responsible officer, that it has not during the preceding year given or promised any money to any political party or in aid of any candidate. No penalties are provided for, however, in connection with this section, and it remains to be seen whether it is anything more than the expression of a 'pious wish.'

In January, 1911, the tax commission made its first report, covering a period of about six months.[10] During this period their main efforts had been directed to the work of assessing the various public utility corporations, which had previously been assessed by various special boards. While a considerable increase was made in the valuation of practically all corporations—the only decreases being in the case of water transportation and natural gas companies —the true value was in no case reached, since the personal and real property of individuals was still so greatly undervalued. There is

[10] The report is dated Dec. 15, 1910.

yet room for a large growth of revenues from these sources when the tax commission shall have carried its work to completion. On the other hand, they were able to secure a fairer equalization of valuations and a more just distribution of tax burdens than had been possible under the previous disjointed methods. The valuation of express, telegraph, and telephone companies was increased almost $7,000,000, or 36 per cent; that of sleeping car, and freight line and equipment companies was increased almost $200,000, or about 12 per cent, but the commission reported that there were more than two hundred freight line companies doing business in the state that had never made a report or paid any taxes, from which they hoped to secure taxes for the future and also delinquent taxes for past years. Bank shares were assessed at only sixty per cent of their true value, as other kinds of property were admittedly assessed at not more than this proportion of their true value.

The act of May 10,1910, had changed the basis for determining the amount of the excise taxes payable by railroads, substituting a tax of four per cent on the gross earnings from intra-state business for the old tax of one per cent on that proportion of their total gross earnings represented by their mileage in Ohio. As many of the roads could not state their intra-state earnings, owing to the short time since the passage of the act, the commission accepted from such companies an estimate of their intra-state earnings, based upon the mileage principle. Even under this arrangement the assessed basis of taxation for railroads was increased some $20,000,000, or about one hundred per cent. The increase in the taxable basis of all other public utilities amounted to $6,340,000, or 8.4 per cent. As a result of the greater care and thoroughness exercised by the commission the state revenues from these sources and from the franchise taxes upon foreign corporations were increased over $550,000. In spite of their efforts, however, the commission reported that in many cases "holding" companies, which were not technically operating public utilities, were escaping taxation. Altogether they found 101 public service corporations, mostly electric light companies, which had not been making reports or paying excise taxes; the amount due the state from these sources was estimated at $1,500,000.

Another important part of the work of the commission was that of supervising the appraisement of real property in the state. Although the work was not finished at the time of making their re-

port, they stated that a conscientious effort was being made to have the real property of the state assessed at its true value. In only two cases was it found necessary to order the reappraisement of a taxing district. As there are over 2500 taxing districts in the state, this speaks well for the fairness of the valuation. Previously the assessed valuation had been about fifty per cent of the true valuation. A table published by the tax commission of 1906 of the sale value and the tax value of real estate properties transferred in four counties during the year 1906 showed that the assessed value was respectively 43, 50, 36, and 37 per cent of the sale price,[11] and this they regarded as typical. In the case of the smallest properties, worth from $350 to $750, the assessed value was generally higher than the sale price, showing an added discrimination against the small property owner. Some of the larger properties were assessed as low as 10.8 per cent of their sale price.

Whether this effort to secure the true cash valuation of property for taxing purposes, as the law has always provided, succeeds or not, the movement is in the right direction. The main evil in Ohio in this connection arises mainly in the resulting inequality between individuals, or between individuals and corporations, rather than between different counties, for the rate of state taxation, which is distributed according to the local assessments, is very small—only .134 cents per $100. The tax commission of 1906 recommended the abolishment of this levy and the complete separation of state and local revenues, but this was the only recommendation made by them upon which the legislature has not acted favorably up to the present time. As all the revenue thus collected by the state is for school purposes and is turned back to the counties after its collection, there is really no tax for state purposes upon general property in Ohio to-day. But since the school taxes are collected according to wealth and redistributed according to the number of children of school age, the effect of the discontinuance of a state levy for this purpose would be to deprive some of the poorer districts of needed funds for education. It hardly seems likely, therefore, that this advice will be followed, nor desirable that it should be.

Not content with providing by these various measures for an increase in the amount of property returned for taxation, the legislature, acting upon a recommendation of the governor,[12] pro-

[11] Rep., p. 56.

[12] Gov. mess., Jan. 3, 1910, p. 6.

ceeded to limit the tax rate, and thus to protect the tax-payer from local and legislative extravagance. Since it was certain that the revaluation in 1910 of the real property in the state, and especially the efforts of the tax commission to secure its appraisement at its true value, would result in a very large increase of taxable property on the duplicate, the tax limit law was passed to prevent any rise in the total amount of taxes levied. The provisions of this curious law are as follows:[13]

Inclusive of sinking fund purposes, the maximum rate of taxation that may be levied for all purposes in any taxing district, is limited to ten mills on the dollar (1 per cent) of the taxable property. If such rate will not produce an amount equal to the tax revenues of 1909, plus six per cent for the year 1911, nine per cent for 1912, and twelve per cent for any year thereafter, or is insufficient for certain specified emergencies, then the rate may be increased to fifteen mills on the dollar (1.5 per cent). Any additional tax beyond this maximum must be approved by a majority of the voters of such taxing district at a general or special election. The spending power of local spending bodies, and of the legislature so far as this depends upon revenue from the general property tax, is thus confined within definite limits, proved by experience to be sufficient; and any increase, beyond a slight one to correspond with the growth of the state or community, is to be decided by a referendum of the voters immediately concerned. In this way the tax-payer is protected against the collection of unnecessarily large taxes through the application of the old high rate to the increased valuation of property. If the valuation is high the rate must be kept low. This was not sufficient to satisfy Governor Harmon, however, and he not only withheld his signature from this act (though allowing it to become law), but in his message the present year urges that the extreme maximum for all purposes be fixed at ten mills instead of fifteen.[14]

After a struggle whose issue was in doubt until the last day of the session this demand was carried out by the passage of the act of May 31 (House Bill No. 186), and at the same time a long step forward was taken in the direction of uniformity and control of local finance. A board, to be known as the "budget commissioners," consisting of the county auditor, the mayor of the

[13] Act of May 10, 1910. 101 O. L. 430.

[14] Gov. mess., Jan. 2, 1911, p. 4. A bill carrying out this suggestion passed the House.

largest city in the county, and the prosecuting attorney, is hereafter to be constituted in each county in the state. The county commissioners, city councils, township trustees, boards of education, and other public taxing bodies must submit to them annually comprehensive budgets setting forth the receipts and expenditures of the past year and the needs of the next year. The budget commissioners are to examine these budgets and if they find that the total amount of taxes to be raised exceeds the maximum allowed, namely three mills for county taxes, five mills for municipalities, and two mills for township purposes, they are to adjust the various amounts so that the total shall not exceed ten mills. "In making such adjustment the budget commissioners may revise and change the annual estimates contained in such budgets, and may reduce any or all the items in any such budget, but shall not increase the total of any such budget, or any item therein."

The total amount of taxes was limited for 1911 to the amount levied in 1910, plus six per cent for 1912, nine per cent for 1913, and twelve per cent for any year thereafter; but in no case to exceed a maximum rate of ten mills on the dollar for all purposes. If the county commissioners, city councils, or other similar bodies deem these rates of taxation insufficient, they may send a resolution to that effect to the deputy state supervisor, and the additional levy may then be submitted to the voters of the district at the next November election, but such increase shall not be for over five years. If a majority of the electors voting thereon favor the increase the additional taxes proposed may be levied. The same act that placed these striking limitations upon the taxing power of local bodies also fixed definite rates for the support of the common and normal schools, Miami, Ohio, Wilberforce, and Ohio State universities, amounting in all to .4175 mills on the dollar of the taxable property in the state.

This act also placed limits upon local indebtedness, as well as upon the tax rate. The net indebtedness incurred by any township or municipal corporation may not exceed 2.5 per cent of the total value of all property listed for taxation; but upon vote of the electors additional bonds may be issued up to 5 per cent.

Finally, the act provided for removing all penalties upon property not listed for taxation prior to 1911, and for starting fresh with January first of this year. In order to induce tax-payers to declare the whole amount of their property, it was enacted that no back taxes or penalties should be assessed upon any omitted prop-

erty, if such property were declared for taxation in 1910. But beginning with January 1, 1911, back taxes and penalties are to be collected from all omitted property, for five years preceding the date when it may be discovered. It was hoped that this exemption and the limitation of the tax rate would lead to the declaration of much property that had hitherto evaded taxation. The slate had been wiped clean of accumulated penalties in much the same fashion in 1826, when the general property tax was first introduced; and now that the administration of the tax was to be made so much more strict, it seemed equitable to allow immunity under certain conditions to those who had been evading taxation, if they would give evidence of a disposition to deal fairly in the future.

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